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No. 01-71

# In the Supreme Court of the United States

HONEYWELL, INC., AND JOHNSON CONTROLS, INC.,
PETITIONERS

*v.*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

Whether the district court's joinder of petitioners as defendants pursuant to Federal Rule of Civil Procedure 19(a), in order to ensure complete relief to respondents, violated their due process rights.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 235 F.3d 244. The order of the court of appeals disposing of the rehearing petitions (Pet. App. 101a-102a) is reported at 249 F.3d 1085. The pertinent orders of the district court (Pet. App. 65a-82a) are unreported.

### JURISDICTION

The judgment of the court of appeals (Pet. App. 24a-25a) was entered on December 15, 2000. Petitions for rehearing were denied on April 11, 2001 (Pet. App. 101a-102a). The petition for a writ of certiorari was filed on July 10, 2001. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. This case arises out of an action brought in 1968 by the Equal Employment Opportunity Commission (EEOC) against the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 120 (Local 120). Local 120 operated a hiring hall to refer employees, principally pipefitters, to employment with contractors with which Local 120 had a collective-bargaining relationship. The EEOC's action alleged that Local 120 had engaged in unlawful racial discrimination in the operation of its hiring hall. A multi-employer contractor association with which Local 120 had a collective-bargaining relationship, the Mechanical Contractors Association (MCA), intervened as a defendant in the action. See Pet. App. 3a-4a; Pet. 3.[1]

In 1972, EEOC entered into a consent decree with Local 120 and the MCA. That decree required Local 120 to operate a register for referral of employment requests in a manner designed to prevent racial discrimination in the referral process. See Pet. App. 85a-91a. In addition, to ensure Local 120's compliance with that obligation and to allow the parties to confirm such compliance, the consent decree required contractors employing members of Local 120 to make written requests for referrals of employees (in Paragraph 7), and to submit monthly reports containing information on union members employed during the reporting period and to allow reasonable inspection of their

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[1] Petitioners are not members of the MCA, although they are members of the Pneumatic Control Systems Council, which has a collective-bargaining agreement with Local 120's parent union. See Plaintiff-Intervenors' C.A. Br. 3-5.

payrolls by counsel for the plaintiffs (in Paragraph 14). *Id.* at 90a-91a, 96a.

2. By 1990, EEOC had determined that Local 120 had not complied with the terms of the consent decree, and moved for an order to show cause why Local 120 should not be held in contempt for failure to comply with the decree. The district court found Local 120 in civil contempt because of its failure to maintain a referral register or to use registration cards as required by the decree. See Pet. App. 29a-30a, 74a-75a.

In addition, EEOC believed that the record-keeping obligations that had originally been imposed on the contractors that were already effectively parties to the case, through the MCA, were insufficient to ensure effective relief.[2] Accordingly, EEOC moved for certification of a defendant class of contractors who employed members of Local 120. See Pet. App. 73a.

The district court declined to certify the class, but determined that certain contractors who employed members of Local 120 should be joined as defendants, pursuant to Federal Rule of Civil Procedure 19(a). The court first found that "the contractors which utilize the referral services of Local No. 120 have not been complying with the provisions of Paragraph 7 and Paragraph 14." Pet. App. 75a. The court then determined that "the joinder of each contractor is required to secure compliance with the provisions of Paragraphs 7 and 14," that "joinder of each contractor using the services of the hiring hall of Defendant Local 120 is necessary to avoid the imposition of inconsistent obligations on the parties to these proceedings and to insure that

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[2] By the time of the contempt proceeding against Local 120, MCA represented only 25% of the contractors using Local 120's hiring hall. C.A. App. 334.

complete relief is granted prospectively" to the plaintiffs, and that "[c]ompliance with the provisions of Paragraph 7 and Paragraph 14 * * * by those contractors which utilize the hiring hall operated by Local No. 120 is essential to the successful operation of the Consent Decree." *Ibid.* The court directed that certain contractors be joined as defendants, directed that its order be served, with a summons, on those contractors, and provided each contractor with the opportunity to file a responsive pleading to show why it should not be joined in the action. *Id.* at 76a-77a. Petitioners then filed a motion arguing that they should be dismissed from the case. They contended that their joinder was not necessary to effect enforcement of the decree. C.A. App. 364-376. The court subsequently heard argument and ruled that joinder was proper. C.A. App. 384-402.

The court also modified the terms of the consent decree to delete the requirement that copies of monthly employment reports be filed by contractors with the court and counsel. Rather, the court directed that contractors keep copies of those forms and permit inspection and copying of those forms by counsel at reasonable times. Pet. App. 66a-67a.

3. After further proceedings, petitioners appealed the district court's order joining them as defendants. The court of appeals affirmed that joinder order. Pet. App. 17a-20a. The court of appeals observed that, absent joinder of the individual contractors who employed members of the union, "the Union's compliance with the decree, especially in light of the individual claims and lax reporting and record-keeping, was impossible to gauge when non-party contractors hired union workers." *Id.* at 20a. That consideration, as well as "the need to modify the decree as a result of the Union's alleged contempt," justified "the district court's

concern that 'complete relief' could not be attained without joining [petitioners]." *Ibid.*

The court also rejected petitioners' argument that "subjecting them to the consent decree, to which they did not consent," constituted a due process violation. Pet. App. 18a. The court found inapposite this Court's decisions in *Martin* v. *Wilks*, 490 U.S. 755 (1989), and *Local No. 93, International Association of Firefighters* v. *City of Cleveland*, 478 U.S. 501 (1986), which were invoked by petitioners in support of the contention that, as a matter of due process, the court could not impose affirmative obligations on them without either their agreement to the terms of a consent decree or a judicial determination of their liability. As the court of appeals explained:

> The district court joined these defendant contractors to ensure complete relief on a prospective basis regarding the record-keeping and reporting requirements of the consent decree. The joinder of [petitioners] was not violative of procedural due process. Their joinder did not subject them to liability for past conduct. They are not being deprived of legal rights by a retroactive application of the terms of the consent decree. The impact of joining [petitioners] is *de minimus* and prospective. The district court joined these defendants to enforce the decree against the Union, not for the binding effect it would have on [petitioners]. [Petitioners] were given notice and an opportunity to defend their positions when the EEOC moved to designate a class of defendant contractors that had utilized the Union's hiring hall.

Pet. App. 19a. Accordingly, the court of appeals ruled that the district court had not abused its discretion in

joining petitioners as defendants to the action. *Id.* at 20a.

## ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. This case concerns a straightforward application of the joinder provisions of Rule 19(a). Rule 19(a) provides that a person "shall be joined as a party in the action if," *inter alia*, "in the person's absence complete relief cannot be accorded among those already parties." Rule 19(a), moreover, permits the district court to order the joinder of third parties at "any stage of the action." See Fed. R. Civ. P. 19 advisory committee's note (1966 amend.). The district court determined in this case that respondents could not be afforded complete relief from Local 120 unless contractors that employed pipefitters referred by the union were required to make their requests for referrals in writing and to maintain limited employment records so that Local 120's compliance with the provisions of the consent decree could be confirmed. Pet. App. 75a. Petitioners do not question the soundness of that determination by the district court, which was specifically upheld by the court of appeals. *Id.* at 20a.

Petitioners question the district court's authority to join them as defendants without their consent or a determination that they are liable for past discrimination. Pet. 9. In fact, Rule 19(a) authorizes a court to join a person as a defendant to ensure that complete relief is granted to a plaintiff, even when the person so joined is not primarily or directly responsible for the claimed injury to the plaintiff. See, *e.g.*, *Associated Dry*

*Goods Corp.* v. *Towers Fin. Corp.*, 920 F.2d 1121, 1124 (2d Cir. 1990) (allowing joinder of landlord because otherwise, the defendant sublessee "would not be able to obtain full injunctive relief on any counterclaim it asserts against [sublessor]"); *United States* v. *Keystone Sanitation Co.*, 903 F. Supp. 803, 815 (M.D. Pa. 1995) (concluding that joinder of cross-claim defendants was "necessary to effectuate the injunctive relief to which the [parties seeking joinder] are entitled"); *Dimond* v. *Retirement Plan for Employees of Michael Baker Corp. & Affiliates*, 582 F. Supp. 892, 897 (W.D. Pa. 1983).

In this case, moreover, the court did not subject petitioners to liability for their past conduct, nor did it apply the terms of the consent decree retroactively. Rather, the court joined petitioners, in the course of entering judgment on a contempt motion, to ensure Local 120's future compliance with the provisions of the consent decree. Pet. App. 75a. That joinder represents a wholly proper application of Rule 19(a)'s authorization of joinder when "in the person's absence complete relief cannot be accorded among those already parties." Fed. R. Civ. P. 19(a)(1).

2. Although petitioners do not argue that the lower courts improperly applied Rule 19(a), they do contend that their joinder violated their due process rights. Petitioners rely principally on *Martin* v. *Wilks*, 490 U.S. 755 (1989), and *Local No. 93, International Association of Firefighters* v. *City of Cleveland*, 478 U.S. 501 (1986) (*Local 93*). As the court of appeals concluded, however (see Pet. App. 18a-19a), neither decision supports petitioners' argument.

In *Martin* v. *Wilks*, this Court addressed whether a group of white firefighters "were precluded from challenging employment decisions taken pursuant to [con-

sent] decrees, even though these firefighters had not been parties to the proceedings in which the decrees were entered." 490 U.S. at 758-759.[3] The Court held that the claims of the white firefighters were not barred by the fact that the firefighters had "failed to timely intervene in the initial proceedings" that led to the consent decree. *Id.* at 762. In reaching that conclusion, this Court stressed that the white firefighters had never been made parties to the initial litigation, and observed that, under the Federal Rules of Civil Procedure (including Rule 19 in particular), "a party seeking a judgment binding on another cannot obligate that person to intervene; *he must be joined.*" *Id.* at 763 (emphasis added). As the Court explained, "Rule 19's provisions for joining interested parties are designed to accommodate the sort of complexities that may arise from a decree affecting numerous people in various ways," *id.* at 767, and "[j]oinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree." *Id.* at 765.

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[3] As the court of appeals noted, some aspects of this Court's decision in *Martin* v. *Wilks* have been affected by Section 108(n)(1) of the Civil Rights Act of 1991, 42 U.S.C. 2000e-2(n)(1), which limited the circumstances in which a consent decree may be challenged by a person that had actual notice of the proposed decree or whose interests were adequately represented at the time of entry of the decree. That provision became effective on November 21, 1991. See Pet. App. 18a. n.2. The court of appeals determined, however, that Section 108 "is not to be applied retroactively" and thus does not apply "to the present case." *Ibid.* The district court also made no determination whether petitioners would be barred by Section 108 from challenging the consent decree. We therefore assume *arguendo* that Section 108 does not apply to this case.

In this case, the lower courts followed precisely the course of action indicated by this Court's decision in *Martin*. The district court did not subject petitioners to the terms of the 1972 consent decree for any period before their joinder. The court imposed only prospective obligations on petitioners, and only after they were served with a summons in the litigation and given an opportunity to be heard. This is not a case, therefore, in which a person was "deprived of his legal rights in a proceeding to which he [was] not a party." *Martin*, 490 U.S. at 759. Rather, this is a case in which persons were made a party to a legal proceeding under "the system of joinder presently contemplated by the Rules." *Id.* at 768. *Martin*, therefore, does not proscribe the district court's actions in this case; it endorses them.

Nor does the Court's decision in *Local 93* support petitioners. In *Local 93*, the Court rejected the contention that a consent decree entered in employment-discrimination litigation brought by a group of minority firefighters against their employer was invalid because the city firefighters' union, which had been permitted to intervene as of right in the litigation, opposed the decree. 478 U.S. at 528-530. The decree "imposed no legal duties or obligations on [the union]," *id.* at 511, and so the Court was not presented with any question about the propriety of third-party joinder to ensure complete relief under Rule 19. The Court did observe that "parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party's agreement." *Id.* at 529. The Court also stated that a court may not "enter a consent decree that imposes obligations on a party that did not consent to the decree." *Ibid.* Those principles, however, simply mean that a court's

approval of a consent decree does not "dispose of the valid claims of nonconsenting" parties, and those claims "remain and may be litigated," including in proceedings on intervention or joinder. *Ibid.* In this case, the district court did not treat the original entry of the consent decree as having resolved petitioners' objections to the terms of that decree. Moreover, the court provided petitioners with a full opportunity to be heard prior to subjecting them to the reporting and record-keeping requirements of the decree, and petitioners filed a motion and presented argument. C.A. App. 364-376, 384-401. The district court's actions were therefore in keeping with *Local 93*.

3. Finally, we note that petitioners cite no evidence of any prejudice caused by the lower courts' actions. The requirements imposed by the joinder order are slight. The affected contractors are required merely to put requests for referrals in writing, or, if a request is made orally, to confirm the request in writing "not more than three business days thereafter." Pet. App. 74a. The contractors are also required to prepare and retain monthly reports containing information on the employees hired through Local 120.[4] *Ibid.* In joining petitioners, the district court specifically found that the requirements imposed upon petitioners (and other contractors) were not burdensome and did not prejudice any contractor in the operation of its business. C.A. App. 398. The court of appeals agreed that the burdens imposed upon petitioners were minimal. Pet. App. 19a.

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[4] The district court has since eliminated the requirement that the contractors file monthly reports "with the Court and all counsel." Pet. App. 66a. The contractors need only include the relevant information in monthly reports that are already provided to Local 120 in the ordinary course of business. *Ibid.*

Petitioners' contention that the decision of the court of appeals provides the EEOC with the "unfettered right" to "bind innocent third parties" to consent decrees (Pet. 12) ignores the fact that district courts may and should take into account burdens on third parties in making joinder decisions. When the burden that would be imposed on the third party would be greater and the need to ensure complete relief less compelling, a court might well rule differently on whether joinder would be justified under Rule 19(a). In this case, the district court gave petitioners the opportunity to be heard on the issues of the need for joinder and the burdens placed on petitioners. After hearing argument, the court properly concluded that joinder of the contractors was necessary to ensure the enforcement of the consent decree, and that the burden imposed on those contractors was slight. Those determinations, which petitioners do not challenge, are sufficient to sustain the joinder decision in this case.

## CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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